Supreme Court, U.S.
FILED
NOV 1 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. 88-507

IN THE

Supreme Court of the United States

October Term, 1988

LUCIOUS WILLIAMS, et al.,

Petitioners,

vs.

RICHARD E. LYNG, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF

GARY A. RATNER
COUNSEL OF RECORD
FOR PETITIONERS

KAY Y. YOUNG
PHYLLIS J. HOLMEN
JOHN L. CROMARTIE, JR.
161 SPRING STREET, N.W.
ATLANTA, GEORGIA 30303
(404) 656-6021
ATTORNEYS FOR PETITIONERS

TABLE OF AUTHORITIES

Case: PAGE

System Federation No. 91 v. Wright, 364 U.S. 642 (1961) 5, 6

Statute:

42 U.S.C. §1480(g) 3

Treatise:

H. Hart and A. Sachs, The Legal Process: Basic Problems In The Making And Application of Law (tentative ed. 1958) 5

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

No. 88-507

LUCIOUS WILLIAMS, et al., Petitioners

v.

RICHARD E. LYNG, et al., Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITIONERS' REPLY BRIEF

Respondents urge denial of the Petition For Writ of Certiorari by arguing both that review by this Court is premature and that the petition presents no issue of importance. Examination of Respondents' presentation, however, reveals that this Petition timely presents a question, important enough to be decided by this Court, concerning the relationship between an equitable decree entered by the federal

judiciary and subsequent Congressional activity.

1. Respondents note the possibility that the questions presented here might be rendered moot if petitioners prevail on certain remaining constitutional issues not now before this Court, and claim that this hypothetical possibility renders consideration of the issue raised by the Petition premature. (Mem.4) Yet, as Respondents well know, this instant Petition is the sole opportunity, ever, for the petitioners to challenge the court of appeals' judgment on the issue now before the Court, an issue which might ultimately prove controlling, as easily as it might prove moot.

In urging this Court to cast aside as "premature" the petitioners' only opportunity for favorable resolution of a potentially dispositive issue, respondents demonstrate that they still possess the same

attenuated sense of due process which led to the very decree they now seek to cast aside. Respondents' grasp at this straw suggests, moreover, a measure of urgency which belies their posture that this case presents no matter of consequence.

2. The linchpin in both the court of appeals opinion and the respondents' present argument on the merits is the contention that Congress, by 42 U.S.C. §1480(g), empowered the FmHA to choose between judicial and non-judicial foreclosure. Like the appellate panel before them, respondents have been unable to support that contention with even a single word of statutory text or legislative history.

On the other hand, respondents do attempt, though unsuccessfully, to remedy a key deficiency in the court of appeals opinion by now offering a purported explan-

ation for the conclusion that Congress intended FmHA discretion. Respondents' conclusion rests, as we are twice told (see Mem. 6), on the fact that Congress "did not include" a requirement of judicial foreclosure in the 1978 amendments. Thus, because the 1978 amendments are in fact totally silent on the issue of judicial or non-judicial foreclosure, respondents take their stand in a legislative vacuum.

There is, however, simply no basis for concluding that Congress's forbearance reflects anything other than Congressional indifference on the specific question of judicial versus non-judicial foreclosure. On the other hand, respondents' method of attributing meaning to Congressional inaction would have the net effect of requiring Congress to have acted affirmatively even to have preserved the status quo under the consent decree. That

approach respects neither Congress's authority to determine for itself the subjects on which it will legislate nor the corollary that Congress can justifiably rely that public policy will not be changed in Congress's own name without Congressional action. See generally, H. Hart and A. Sachs, The Legal Process: Basic Problems In The Making And Application of Law 1394-1401 (tentative ed. 1958).

Furthermore, and quite apart from the burdens which respondents' approach would cast on Congress, the extraction of meaning from legislative inaction is necessarily a treacherous course. The sounds of silence on which respondents rely differ pointedly from the statutory amendment which "in the clearest terms" supported modification of the consent decree in System Federation No. 91 v. Wright, 364 U.S. 642, 648 (1961). Unlike the clear signals in System Federa-

tion, imagined emanations from the void are hardly an adequate basis for a judicial body to deem its solemnly adjudicated decree to have been overruled by subsequent Congressional action. Instead, to protect both the legislative and judicial functions, this Court should declare that an equitable decree may not be modified in the name of Congress until Congress has given an affirmative, clear, and convincing signal of a relevant change in public policy.

Therefore, it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

GARY A. RATNER
KAY Y. YOUNG
PHYLLIS J. HOLMEN
JOHN L. CROMARTIE, JR.

161 SPRING STREET, N.W.
ATLANTA, GA 30303
(404) 656-6021

ATTORNEYS FOR PETITIONERS